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STATE FOR EUR/AGS; L/EUR AND L/LEI; JUSTICE FOR OFFICE OF
INTERNATIONAL AFFAIRS

E.O. 12958: N/A

TAGS: [PREL](#) [PGOV](#) [AU](#)

SUBJECT: U.S.-AUSTRIAN AGREEMENT ON PROTECTION OF
CLASSIFIED INFORMATION: NEEDED AND POSSIBLE

11. This message contains action requests in paras 9 and 10.

12. Summary. Incidents of unauthorized Austrian release of
USG classified information over the past year point to the
need for U.S.-Austrian agreement on measures to protect such
information. Austria's Information Security Law, passed in
2002 and amended in 2007, allows for the conclusion of such
agreements. Thus far, Austria has completed two such
agreements, with Germany and Slovakia. Several others are in
the negotiation phase. A cursory review of the Austrian law
suggests several areas where negotiation may be difficult.
Embassy requests Department authorization to explore with the
GoA, on a formal basis, the possibility of opening
negotiations on an agreement. End Summary.

13. Econ/Pol Counselor met April 17 with MFA Deputy Legal
Affairs Advisor Helmut Tichy to discuss Austrian handling of
classified information, in light of recent incidents of the
unauthorized release of classified information provided by
the U.S. to Austria. Most notably, in 2007, an Austrian
court released classified information provided by the USG to
a defense attorney, despite Interior Ministry assurances that
the information would be protected against disclosure. The
judge was acting within his authority under current law and
there are no binding provisions in Austrian law to prevent
this from occurring again in the future. This initiative is
intended to prevent a repeat of such incidents.

Austrian Protection of Classified Materials

14. Austrian management of classified information had, prior
to 2002, been managed on a regulatory basis within individual
ministries and on the basis of informal inter-ministerial
agreements. However, Austria's increasing cooperation with
European security organizations, including NATO, obliged the
government to develop a more systematic, law-based system,
according to Deputy Advisor Tichy. Following a
government-wide consultation and negotiation process, the
Information Security Law (ISL) was adopted in 2002. The ISL
was amended slightly in 2007. According to Tichy, the law
applies to all ministries and does several things: 1)
establishes two points for granting security clearances: the
Ministry of Defense for its personnel and the Interior
Ministry for all other ministries; 2) establishes a
four-level system of classification; 3) creates an
inter-ministerial council (Information Security Council)
responsible for implementation of the law; 4) criminalizes
the release of classified information; and 5) allows the

government to enter into international agreements on the protection of shared classified information. Agreements negotiated within the framework of the ISL do not require parliamentary ratification.

¶15. Tichy pointed out that the law does not apply to several named persons, such as the President of the Republic. In addition, it does not apply to the parliament or the judiciary. During the negotiations process, these institutions insisted on maintaining their independence and providing for the protection of classified information through internal regulations. However, Tichy did point out that these persons and institutions can be bound by international agreements, which he said would include an agreement negotiated within the framework of the ISL.

Austrian Bilateral Agreements Under the ISL

¶16. As of April 2008, Austria has completed negotiation of two bilateral agreements under the ISL framework. The agreement negotiated with Germany entered into force in 2007. An agreement negotiated with Slovakia just entered into force on May 1, 2008. Negotiations have been under way for some time with Latvia, the Czech Republic, Slovenia, and Bulgaria. Negotiations with France began in April 2008. Tichy explained that these countries had all approached Austria about bilateral agreements prior to 2007, and that Austria was open to negotiating further agreements as needed. He also reported that none of the agreements negotiated or contemplated thus far contain provisions regarding the persons or institutions exempted from the Austrian law. He had researched the issue and discovered that Austria's partners thus far also generally have no laws regulating

treatment of classified information by the legislature or courts.

¶17. Asked if Austria was negotiating on the basis of a model agreement, Tichy said no. The German agreement, he said, was quite lengthy and detailed, and based on a text provided by Germany. The Slovakian text was much shorter. Tichy did aver that the GoA found the shorter text adequate for its needs. Tichy volunteered that, should the U.S. be interested in negotiating a bilateral agreement, he believed we would receive a positive response.

Justice Department Interest

¶18. Informal inquiries by Legatt with the Counterterrorism Section at USDOJ indicate strong interest in the initiative and in an exchange of experts to discuss, inter alia, the U.S. Classified Information Procedures Act (1980). Preliminarily, a DOJ team could be available for such a discussion in July.

Embassy Request

¶19. Embassy requests Department authorization to: approach the MFA to indicate preliminary USG interest in the negotiation of a bilateral agreement; ascertain what steps would be required on the Austrian side to start such negotiations; and obtain further details on the negotiating process and timeframe Austria would envisage to reach an agreement.

¶10. If Department concurs with this initiative, Embassy further requests Washington guidance on how the U.S. side of the process would be initiated, whether negotiations would be carried out face-to-face or indirectly, and what timeframe the U.S. would envisage for a negotiation.

Kilner